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December 13, 2018

**VIA ECF**

Honorable Lorna G. Schofield  
United States District Judge  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: Chan v. Chinese-American Planning  
Council Home Attendant Program, Inc.  
Case No.15-CV-09605**

Dear Judge Schofield:

We represent the defendant, Chinese-American Planning Council Home Attendant Program, Inc. ("CPC") in the above-captioned matter. We write pursuant to your Order (Docket No. 82) that the parties shall file letters on ECF apprising the Court of the status of the mediation/arbitration. Respectfully, we write without waiving, and expressly reserve, the privileged and confidential nature of the parties' mediation and arbitration proceedings.

As a follow-up to my prior letter dated November 19, 2018 (Docket No. 81), we write to inform the Court that on December 10, 2018, an attorney representing Plaintiffs' union, 1199SEIU United Healthcare Workers East ("1199") and I met with the contractually appointed mediator, Martin Scheinman, Esq. ("Mediator"). The Mediator also invited to attend other management attorneys

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representing a number of home health care, non-profit employers organized by 1199 who have similar pending or threatened litigation in state and federal court.<sup>1</sup>

The Mediator proposed a suggested template resolution of the case but felt that for efficiency, speed, and effective management of such class action, it would be best to try to aggregate as many cases as possible to create a common fund. It would be extremely costly to have separate claims administration, multiple attorneys' fees applications, fair hearings, etc. The Mediator requested that by January 7, 2019, the other management attorneys inform him if their clients are interested in pursuing the framework of a "global settlement."

Upon receipt of the information regarding the interest of other home health care agencies represented by 1199, the Mediator will contact Plaintiffs' attorneys in the instant case as well as plaintiffs' counsel who are suing other home attendant agencies that express an interest in a "global settlement". The Mediator would expect to meet with them early next year to discuss the parameters of a settlement.

In addition to the Chan case, there is a parallel case involving many of the same employees: Chu et al v. Chinese-American Planning Council Home Attendant Program, Inc., Index No. 651947/2016, in New York Supreme Court before Justice Carol Edmead that has been stayed pending the mediation/arbitration of the Chan case. We would hope to resolve both of these cases. We also represent another home health care agency that has a similar suit pending against it brought by the same attorneys as the Chan case. This agency as well as others have expressed a willingness to participate in such a "global settlement".

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<sup>1</sup> We understand that there are approximately 150 wage and hour cases against home health care agencies pending in New York State and federal courts although not all involve 1199 members.

Honorable Lorna G. Schofield

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Due to a long-planned commitment to be out of town the week of December 17, I will be unable to attend the court conference on December 20. In light of the most recent developments, I would respectfully ask the Court to postpone the status conference for sixty (60) days to enable the Mediator to obtain the interests of other agencies and to meet with Plaintiffs' counsel and other attorneys representing home health care workers in these actions. Plaintiffs' counsel has consented to this request for a postponement.

We believe that this approach will result in an ADR solution that will obviate the need for further court intervention until approval of a final settlement is necessary.

Respectfully submitted,

/s/ Kenneth Kirschner

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cc: Counsel to All Parties (by ECF)